

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1433

To be argued by
JOEL J. ZIEGLER

UNITED STATES COURT OF APPEALS
FOR THE SECOND DISTRICT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

THOMAS PAUL DEXTER,

Defendant-Appellant.

Docket No. 77-1433

APPENDIX

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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PAGINATION AS IN ORIGINAL COPY

INDEX

	<u>Page</u>
Order appointing Counsel and Scheduling Order, dated January 16, 1978	1
Minutes of Trial, dated May 9, 1977	3 - 17
Minutes of Trial, dated May 9, 1977	115 - 135
Minutes of Trial, dated May 9, 1977	147 - 151
Minutes of Trial, dated May 10, 1977, Court's charge on issue of intent	190 - 192
Minutes of sentence, dated October 6, 1977	17 - 19

for the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

THOMAS PAUL DEXTER,
Defendant-Appellant

ADDRESS ALL INQUIRIES TO
Mr. O'Connor
~~Ms. Bonett~~ or
Ms. Bonett
(212) 791-0105

Docket No. 77-1433
Scheduling Order No. 3

BEFORE: IRVING R. KAUFMAN, Chief Judge

The Court having appointed ~~continued~~ Joel J. Ziegler, Esq.,
as counsel for appellant Thomas Paul Dexter
pursuant to the Criminal Justice Act by order dated January 16, 1978
and being advised as to the progress of the appeal and that notice
of appeal was ~~were~~ filed on October 6, 1977 and the record on appeal on November
16, 1977,

IT IS HEREBY ORDERED that a copy of the transcript of
testimony shall be filed with the Clerk of the District Court on
or before January 30, 1978

IT IS FURTHER ORDERED that the appellant may without further
order of the court, remove the record for purposes of preparation of
the appellant's brief and appendix, provided that the record be
returned to the custody of the court on or before the date set for
filing the appellant's brief.

IT IS FURTHER ORDERED that eight (8) xerographic copies of
the appellant's brief and appendix be filed on or before March 3, 1978.

IT IS FURTHER ORDERED that the appendix shall consist at
least of a copy of the docket entries, the indictment, the charge to the
jury, and any opinion of the court below.

IT IS FURTHER ORDERED that if such brief or appendix shall
not be filed by the date set the appeal shall be dismissed forthwith.

IT IS FURTHER ORDERED that ten (10) copies of the brief of
the United States shall be filed on or before April 3, 1978.

IT IS FURTHER ORDERED that the court may require as many as
fifteen (15) additional copies before final disposition of the action.

IT IS FURTHER ORDERED that the United States may, without
further order of the court, file ten (10) copies of an appendix to
its brief.

IT IS FURTHER ORDERED that Joel J. Ziegler, Esq.,
counsel for the appellant Thomas Paul Dexter, shall submit
a completed voucher (CJA-20) on or before April 12, 1978.

IT IS FURTHER ORDERED that the argument of the appeal be
ready to be heard during the week of April 17, 1978.

A. DANIEL FUSARO,
Clerk

(Jury Not Present.)

MR. KELLY: The Defendant is ready for trial, Judge.

THE COURT: And the Government is also ready?

MR. RUSSO: The Government is ready, Your Honor. Prior to impanelling the Jury, however, I ask that I review certain medical records that have been subpoenaed by the Defense, and I would ask at this time for an offer of proof with respect to those records; I've read through them and I would just like to request of the Defendant, the purpose for which those records would be introduced?

MR. KELLY: Judge, the purpose for which those records would be introduced would bear on the question of whether or not, and I think it is the specific intent that is required in this crime, whether or not the Defendant knowingly and willfully committed the crime that is alleged in the indictment. I'm not raising any insanity defense in this case. I'm not even raising any question of diminished capacity.

What the Defendant's state of mind was at the time of this alleged bank robbery, I don't know. I think that the fact that the Defendant has a history of drug addiction, alcoholism, schizophrenic episodes and

1
2 the like is something that should be presented to the
3 Jury to indicate to the Jury just what type of individual
4 we are dealing with in connection with this alleged
5 crime. The Jury should consider that in connection with
6 whether or not this Defendant is alleged to have committed
7 the crime, whether he did it knowingly and willfully.

8 MR. RUSSO: Your Honor, as I have reviewed those
9 records and the one particular group of records that
10 troubles me is the Defendant's hospitalization up to
11 the morning of November 19, 1976, which was the morning
12 of the day of the crime that is before the Court at this
13 time.

14 As I read through the records, the Defendant was
15 apparently released at 10:30 or 11:00 on November 19th.
16 The crime alleged herein occurred approximately 6:30
17 that evening.

18 That hospitalization, as I read the records, was
19 for a gastro urinary problem, related as I read it from
20 the records, to an alcoholic problem. Although there
21 are certain psychiatric records which predate this hospitalization,
22 the facts of the discharge on the morning
23 of the crime and in fact that this particular hospitalization
24 did not in my reading seem to concern a mental
25 problem or anything--any type of intent that could

possibly be brought--I don't believe they are truly relevant and I would object to their use at trial.

MR. KELLY: Well, in response to that, Judge, may I say my recollection is true or is the same as Mr. Russo's with respect to these records. I think he's referring to the Good Samaritan records. That is the three of them, it's the Good Samaritan in Central Islip. I think the point of the Good Samaritan records, although they don't bear on any mental problems, he was treated for, in fact I think it is something that should be brought to the attention of the Jury; on the very morning of the crime the Defendant was released from the hospital and I think the record indicates that he was quiet and he was calm and he was polite at that time, and lo and behold he's alleged to have been in a bank with a wig and ski mask in a threatening manner and I think the position of times between his being released from the hospital and the time of his alleged complicity in the indictment, I think is something which I might couch as an unusual type of thing. In other words, right out of the box he's released from the hospital in a calm and polite condition and amenable manner and some hours later he's in a bank robbing it.

I think this is something that the Jury can take

1
2 into consideration.

3 THE COURT: Is the Defendant taking issue with
4 the facts that are charged by the Government? That is
5 that it was the Defendant in the bank and soforth?

6 MR. KELLY: We're not contesting that at all.
7 The only thing we want the Jury to determine that if
8 the Defendant did in fact attempt to rob the bank did
9 he do it knowingly and willfully?

10 THE COURT: Since his state of mind then is in
11 issue, I'd be reluctant to exclude anything that would
12 seem to have any relevance to it. Even if his hospitali-
13 zation, being released from the hospital that morning,
14 and the period of hospitalization or on something
15 other than the psychiatric problem, arguably atleast
16 how strongly I think it's for the Jury. Arguably it
17 could bear on his state of mind. Is it your intention
18 to simply submit the hospital records?

19 MR. KELLY: Yes, Judge. I was just talking to
20 Mr. Russo, and maybe we could stipulate that these were
21 the hospital records that were prepared in the normal
22 course of business.

23 THE COURT: I'm sure there's no argument as to
24 their authenticity.

25 MR. RUSSO: I would stipulate.

1
2 THE COURT: Who can understand hospital records?

3 MR. KELLY: I found they are in places a little
4 difficult to read, Judge. But I think there is enough
5 in the hospital records that I can read and bring to
6 the Jury's attention on the matter I have in mind.

7 THE COURT: How about the Lakeside and Central
8 Islip admissions? When were they in point of time?

9 MR. KELLY: Let me just check, Judge. The Lake-
10 side was on October 26th to October 28th.

11 THE COURT: '76?

12 MR. KELLY: And the Central Islip was from
13 October 28th until approximately November 3rd or
14 something like that.

15 THE COURT: All in '76?

16 MR. RUSSO: All in '76, just a month or so
17 before.

18 THE COURT: He apparently went directly from
19 Islip--

20 MR. KELLY: He was in a schizophrenic episode
21 in Lakeside. He was then committed to Central Islip.
22 He was in Central Islip for three or four days and then
23 released. Sometime later he entered the Good Samaritan
24 Hospital. That was on November 16th, I think for a
25 gastro-urinary workup at that time.

1
2 He was released on November 19th, the day of
3 the crime is the evening of November 19th. I would
4 think the records of Lakeside and Central Islip are
5 close enough in time to be offered with respect to the
6 Defendant's state of mind at the time he was alleged
7 to have robbed the bank.

8 THE COURT: This is all going to be part of the
9 Defense?

10 MR. KELLY: Yes, Judge.

11 THE COURT: I think before I make a final ruling
12 I would like to see the records themselves; do you have
13 them here?

14 MR. KELLY: They were delivered to your office.

15 THE COURT: The Government's position is simply
16 they are irrelevant?

17 MR. RUSSO: Most particularly, the records that
18 I believe would be--would reflect upon the events of
19 the date of the crime. I believe that those records
20 although closest in time, are least relevant to a
21 psychiatric or state of mind defense. That is what is
22 being suggested here.

23 With respect to the earlier ones, particularly
24 the psychiatric hospitalization, the Government's
25 position would be in light of the defense proffered here

1
2 that it would be relevant. But, gastro-urinary records
3 which deal with the hospitalization that ended on the
4 morning of the day of the crime, I feel are prejudicial
5 and not probative of the state of mind of the Defendant.

6 THE COURT: I think there is something here I
7 don't fully grasp. I would be inclined to think that
8 if I was sitting on a Jury, which isn't my function,
9 but he's in the hands of medical people on the 19th and
10 he is released. It would seem to be to me fairly strong
11 evidence he knew what he was doing.

12 MR. RUSSO: Unless, Your Honor, I am only think-
13 ing out loud, the Jury concluded he was hospitalized
14 and then went on an alcoholic bender shortly after being
15 released from the hospital, it might cut the other way.
16 That obviously would have to be established as a defen-
17 se.

18 THE COURT: If that's what he did, whether he's
19 in the hospital or not, wouldn't make any difference.
20 How long was he in the Good Samaritan Hospital?

21 MR. KELLY: He was in the Good Samaritan, I
22 think, from the 16th through the 19th.

23 THE COURT: They sure did a lot of paper work.

24 MR. KELLY: I was impressed by the amount of
25 the paper work that is done on such a short confinement.

1
2 THE COURT: Unless they get paid by the
3 pound. These are prior admissions, September '74,
4 May '74, July '76?

5 MR. KELLY: Yes. I think there is a separate.
6 I was going to admit the certified copies, which is
7 November 16th.

8 THE COURT: This batch of papers?

9 MR. KELLY: There is an original batch of
10 papers. There are previous confinements which aren't
11 relevant.

12 THE COURT: You're not offering those?

13 MR. KELLY: No, Judge.

14 (Short pause.)

15 THE COURT: Your position, Mr. Kelly, is that
16 you are not pleading insanity, you're not pleading
17 diminished capacity, but you claim that all the circum-
18 stances would seem to indicate that he did not have
19 the requisite intent to commit the offense?

20 MR. KELLY: That would be the question for the
21 Jury to determine, whether given this type of background,
22 the Defendant knowingly and willfully committed the
23 crime.

24 I think Mr. Russo will of course, "notwith-
25 standing the Defendant's background, the manner in which

1
2 the crime was committed in terms of the wig, ski
3 mask being used and other threatening conditions, it
4 would indicate that the Defendant did in fact do what
5 he did knowingly and willfully."

6 THE COURT: I am not sure whether when we get
7 down to the charge I'll be able to submit that question
8 to the Jury. But, I will not exclude the hospital
9 records on the grounds of relevance. Although, I'm
10 not sure I'm correct as to my ruling on that score.

11 I want to do some research, but for present
12 purposes, I'll go ahead on that basis.

13 MR. KELLY: Thank you, Judge.

14 THE COURT: Any other problems?

15 MR. RUSSO: Yes, Your Honor. In light of the
16 statements made by Mr. Kelly with respect to the de-
17 fense that he raised, and the ruling of Your Honor,
18 the Government would wish to introduce a 1970 bank
19 robbery conviction here in the Eastern District of
20 New York of the Defendant Thomas Dexter, together with
21 an armed robbery of a coin store three months ago,
22 while the Defendant was out on bail the instant crime.

23 The purpose of that admission would obviously
24 be to establish the intent which the Defense indicates
25 it wishes to put in issue. The Government certainly

1
2 has the burden of establishing a prerequisite intent
3 and I believe the cases in the Second Circuit state
4 clearly that prior and subsequent acts may be admitted,
5 so long as it's not solely as evidence of bad character
6 and where they are introduced for purposes of intent.
7 That would be quite proper. It would be the Government's
8 position that we would wish to introduce that along the
9 lines of--the theory that the more the act is done the
10 less likely the act is done innocently or without the
11 requisite mensa rea.

12 THE COURT: Do you intend to do that as part
13 of your direct case or rebuttal case?

14 MR. RUSSO: In light of the statements and Your
15 Honor's ruling, I would wish atleast to introduce a
16 certified record of the Defendant's conviction on the
17 bankrobbery in 1970 on my direct case and perhaps in-
18 troduce the victims of the crime which was committed in
19 Valley Stream, because that is a nonadjudicated criminal
20 act at this time, Your Honor.

21 I would wish to do that and also on my direct
22 case.

23 THE COURT: Mr. Kelly?

24 MR. KELLY: Well, Judge, of course, I object
25 because it's prejudicial. Your Honor has to determine

1
2 the balance between prejudice and relevance of this
3 testimony.

4 I realize that prior and subsequent similar
5 acts can be introduced, all I can say it is prejudicial
6 and I don't think the Defendant, at best, without this
7 type of evidence produced by the Government, has a
8 strong chance of prevailing. I think any chance of
9 prevailing would be out of the question.

10 Particularly if the records were introduced on
11 the prior charge on the Government's direct case. I
12 can see some reason for using these things on rebuttal,
13 but not on the direct case.

14 THE COURT: What happened as a result of the
15 1970 conviction?

16 MR. KELLY: He was sentenced by Judge Judd to
17 prison and he was released sometime in 1974. Following
18 his release on this case, this particular indictment,
19 he was arrested by the Nassau County authorities on a
20 robbery charge, that's the one that Mr. Russo referred
21 to.

22 THE COURT: It raises an interesting question as
23 to probative weight. How soon after the commission of
24 the present crime was the robbery committed?

25 MR. RUSSO: The present crime before the Court

1
2 was committed on November 19th of 1976. The subsequent
3 act was committed on January 24th of 1977. A period
4 of not 60 days. I would also point out to the Court,
5 to advise the Court that the act, I believe although
6 on a Rabbi, has a number of dissimilarities. However,
7 in as much as the Government does not wish to introduce
8 the act to establish a common plan and scheme, I don't
9 believe that it need be strictly a similar incident.
10 I think it is sufficient that it was a robbery, an
11 attempt to take valuables from another by force or
12 intimidation.

13 THE COURT: I understand. It could be argued
14 either way.

15 Anyone who is under charges for bank robbery
16 within a short time after that goes out and commits
17 another robbery, you can argue he's got to be out of
18 his mind.

19 MR. RUSSO: It will be argued in any event.

20 THE COURT: I don't know what that signifies
21 as to probative weight of the offense. You would have
22 to prove that by one of the victims of the robbery.

23 MR. RUSSO: That's correct, Your Honor.

24 THE COURT: Are we going to end up with a
25 second crime?

MR. RUSSO: I don't believe so, Your Honor.

I think that the testimony with respect to the January robbery would be quite brief. I think we have an eye witness identification. The victim was confronted by the Defendant. A further similarity between the crimes was that the Defendant was apprehended at the scene.

THE COURT: Then the question of the identification is not critical to the fact of whether it was this Defendant who committed that robbery?

MR. RUSSO: Which robbery is that, the bank robbery?

THE COURT: The jewelry store.

MR. RUSSO: There doesn't seem to be any question.

THE COURT: You say he was apprehended at the scene.

MR. RUSSO: And an identification made by the victim.

THE COURT: Was he wearing a ski mask then?

MR. RUSSO: No, Sir.

THE COURT: Is there any question in your mind, Mr. Kelly, as to your intent to use these hospital records and raise the Defense you have discussed here?

MR. KELLY: No, Judge.

*permits
Permits
to use
and of other crime*

1
2 THE COURT: You're definitely going ahead?

3 MR. KELLY: Yes.

4 THE COURT: I'll permit the Government to prove
5 both of those other acts on the question of intent.
6 I'll give a limiting instruction. I assume you want
7 me to give one at the time the testimony is presented
8 and also in the final instructions?

9 MR. KELLY: Yes, Judge.

10 THE COURT: All right, do we have any other
11 problems?

12 MR. RUSSO: No, Your Honor.

13 MR. KELLY: Not that I'm aware of, Judge.

14 MR. RUSSO: Your Honor, would that be permission
15 to introduce those on my direct case?

16 THE COURT: Yes. I'll have a short preliminary
17 charge for the Jury just to orient them. Then we can
18 go right into the opening statements.

19 (Short pause.)

20 THE COURT: One of the Jurors is delayed and she
21 called in. She'll be here in ten or fifteen minutes.
22 We'll proceed as soon as she gets here.

23 (Short recess taken.)

24 (Whereupon the Court resumed.)

25 (Jury Not Present.)

1
2 THE COURT: For the record, I have reconsidered
3 the ruling that I have made with respect to similar
4 acts. I think what I'll do is restrict their use to
5 the Government's rebuttal case. My concern is with
6 the Jurors, being sure that the Jury fully comprehends
7 what they bear to, solely on the question of intent.
8 I think in all fairness to all parties, the significance
9 of those acts for the limited purpose of bearing upon
10 intent will be best high lighted by having them pre-
11 sented as part of the rebuttal case, rather than as
12 part of the direct case.

13 So, consider what I said before amended to that
14 extent. Is there any question of competency of the
15 Defendant to stand trial today?

16 MR. KELLY: No, Judge.

17 THE COURT: For your information as to our
18 timing, you may have seen the calendar out in the hall.
19 We will go until 1:00 this morning. We'll resume at
20 2 and I have a hearing on, it's scheduled for 3 o'clock
21 but we'll go until 3:30. If we run over into the
22 supper hour with them, that will be their problem,
23 not yours. Are we ready to begin?

24 MR. RUSSO: Yes.

25 THE COURT: Bring in the Jury?

1
2 MR. RUSSO: Not on the direct case, Your
3 Honor.

4 THE COURT: The Government rests.

5 Mr. Kelly?

6 MR. KELLY: May I reserve my motions, Judge?

7 THE COURT: Yes, if you wish.

8 MR. KELLY: Will Mr. Russo stipulated that I
9 have here three sets of records which are either
10 originals or certified copies of--Xerox copies of
11 hospital records of Lakeside Hospital, Central Islip
12 Hospital and Good Samaritan Hospital; and that these
13 records were made in the ordinary course of business
14 and it was in the ordinary course of business to
15 keep such records?

16 MR. RUSSO: The Government will so stipulate.

17 MR. KELLY: May I have these marked please in
18 Evidence as Defendant's Exhibit A this document?

19 THE CLERK: Several page document received
20 in Evidence as Defendant's Exhibit A.

21 THE COURT: Which hospital is that?

22 MR. KELLY: It's Lakeside Hospital, 25 page
23 document, and I also have the Central Islip document
24 and again that is marked as Defendant's Exhibit B
25 in evidence.

1
2 THE CLERK: Received in evidence as Defendant's
3 Exhibit B.

4 MR. KELLY: And the Good Samaritan Hospital,
5 pages one through twenty one, Defendant's Exhibits C.

6 THE CLERK: Received in evidence as Defendant's
7 Exhibit C.

8 THE COURT: Subject to the objections we have
9 previously discussed?

10 MR. KELLY: Yes, Judge.

11 Ladies and Gentlemen of the Jury, I am going
12 to read from these hospital records. The first hospi-
13 tal record has been marked as Defendant's Exhibit A
14 in Evidence. The first page is headed, "Lakeside
15 Hospital, Commack, New York, Patients Name, Thomas
16 Dexter." His middle name is omitted. It says Thomas
17 Dexter.

18 The last name is first and it gives his add-
19 ress, his age is 32, date of admission, 10/26/76.
20 Date of discharge, 10/28/76.

21 The name of the attending physician was Dr.
22 Egner. A previous hospitalization in the Good
23 Samaritan Hospital is noted in July of '76. First of
24 all, the provisional diagnosis is cystitis. The final
25 diagnosis is acute pyelonephritis and also cystitis.

1
2 The second diagnosis or complication is acute
3 schizophrenic episode. That is apparently signed by
4 Dr. Perez and Dr. Howe. There is indication in this
5 report thereafter the Defendant was transferred to the
6 Central Islip Psychiatric Hospital.

7 The second page that I draw your attention to
8 is headed, "Lakeside Hospital, Discharge Summary."
9 The Patient's name is Dexter, Thomas. Physician's
10 name is Egner. The date is 10/26/76. The discharge
11 date is 10/28/76. This is chart number 763337.

12 (Summary; this is a 32 year old white male
13 who was admitted to the hospital for urological evalu-
14 ation; however, on the first hospital day he became
15 violent and required psychiatric consultation and
16 was transferred to Central Islip Hospital. Workup
17 was never completed.)

18 THE COURT: Mr. Kelly, for the convenience
19 of the Jury, since they may request to see the hospital
20 records, I suggest you put a paper clip on the pages
21 from which you read.

22 MR. KELLY: Yes, Judge.

23 The next page is entitled, "Lakeside Hospital,
24 Copiague, New York. Report of Consultation." The
25 name is Dexter, Thomas, attending physician is Egner;

1 Consulting physician is Howe. The date is 10/28/76.
2
3 Report requested regarding medical evaluation. The
4 report says, "Findings: Essentially this 32 year old
5 white male is admitted because of urinary tract infec-
6 tion. Patient has history of drug abuse in the past
7 and in 1974 was detoxified from heroin. Subsequently
8 put on methadone maintenance program. Patient functioned
9 under methadone maintenance program until approximately
10 10 months ago when he was administratively detoxified
11 because of heavy concomitant alcohol use. Patient
12 also has a history of seizure like disorder for which
13 he was hospitalized at Good Samaritan Hospital and
14 diagnosed as being in DT's.

15 "Family history is noncontributory.

16 "Social History; patient is a heavy drinker of
17 alcohol and smokes approximately 2 packs of cigarettes
18 a day and states he is allergic to talwin.

19 "Social History: patient is extremely anxious
20 and nervous.

21 "Physical Examination: reveals a well developed
22 fairly nourished male, poorly oriented at this time.
23 Physical findings do not differ from those listed on
24 the chart.

25 "Diagnosis: This patient obviously has had

1
2 schizophrenic episode and seems to be paranoid at this
3 time. It's unclear whether this is due to alcohol
4 withdrawal, intoxication effects of drugs, or underly-
5 ing psychiatric pathology. However, it is my recommen-
6 dation at this time that this patient be seen in
7 psychiatric consultation for possible commitment.
8 Thank you."

9 It is signed Alfred S. Howe, M.D.

10 The next page I'll read from is headed in the
11 same manner as the previous one, "Lakeside Hospital,
12 Copiague, New York: Report of Consultation"; Consul-
13 ting physician is Dr. Paez.

14 This report is dated 10/28/76.

15 "Report: findings; psychiatric consultation
16 10/28/76. 2 p.m. 32 year married male admitted to
17 Lakeside on 10/26/76 with cystitis. History of drug
18 abuse and alcohol.

19 "Sudden onset of hallucinations last night.
20 Became severely aggitated since. Assaulted a nurse
21 who suffered fractured ribs. Assaulted security
22 guard. The police had to be called twice last night.

23 "Today he is hallucinatory, anxious, restless,
24 fearful. He received injection of thorazine and valium
25 this morning.

"Diagnosis, acute schizophrenic episode.

"Recommendation, to be taken to Central Islip State Hospital," and it looks like a certification.

The signature of the consultant is illegible.

As indicated above, the consultant is the physician, however, it's a Dr. Paez.

The next document is "Lakeside Hospital, progress report." The name is Dexter, Thomas, ward 305. Service, Dr. Egner. This case is case number 76-3337. The date is 10/26/76.

"Admission note, chief complaint, 32 year old male white who is admitted to the hospital with acute cystitis. Urinalysis in the office revealed innumerable WBC's and right flank pain. Urological evaluation is to include IDP and cystoscopy.

"Physical examination: chest; clear to A & P. Abdomine; soft, good bowel sounds, no masses, no abdominal tenderness. There is right flank tenderness present.

"Impressions: Acute right pyelonephritis and cystitis."

It is signed John Egner. There is an entry for 10/28, which is illegible. Then on the 28th there is another entry:

"Patient became violent and unresponsive to Tozin, began beating up staff and had to be restrained. Will have to transfer to psychiatric hospital and delay cystoscopy."

The next document is a physician's order form, Lakeside Hospital. The pharmacy names the generic name of a drug. This apparently is a requisition for the drugs on the side, and it indicates it refers to Thomas Dexter. There is an indication here that the drugs requisitioned were for thorazine, librium and valium.

The next page is a similar requisition. The name of the patient is Dexter, Thomas. Mentions demerol, 100 milligrams. Patient restrained, called police department.

This is a page, Lakeside Hospital, nurses' record. There's an entry for 10/28. Apparently it was approximately 11 o'clock.

The nurses' record, "This is disoriented to time and place." This looks like d-o-b-"in hallway. Other patients room, 2:10 a.m. Patient is disruptive. Dr. Egner, no new orders. Patient confused, disoriented. Hit nurses. Security guard. Ran down all. Difficult to control.

1
2 "3:45 a.m., Dr. Egner: orders noted. Demerol,
3 100 mgs. stat, patient restrained. Hallucinating,
4 disorientation continues. Attempting to get out of
5 restraints," and there is a signature of apparently
6 a Mr. Devilla (ph) there is anote after that on 10/28
7 apparently about 7 a.m., "patient becomes verbally
8 abusive. Hallucinating, remove restraints, supervisor
9 notified. Placed call 7:30, Dr. Egner notified. Police
10 here, straight jacket acquired for possible later use.
11 8:15 Dr. Egner, patient screaming, thrashing, attempt-
12 ing to escape. Thorazine 100 mgs. stat. Becomes
13 quieter, but continues to hallucinate.

14 "Dr. Howe in spoke to patient and wife. Dr.
15 Paez called by Dr. Howe. 12:45 librium 25 mgs. 1:45,
16 becoming violent again. Dr. Howe here. Valium, 10
17 mgs. I.W. 2:30 Dr. Paez here, certificate signed for
18 tranferral to Central Islip."

19 The last page is the Suffolk County Social
20 Service authority, authorization for medical transpor-
21 tation, name of the patient, Thomas Dexter. That is
22 from Lakeside Hospital to Central Islip, Psychiatric
23 Hospital. It is signed by a Registered Nurse which
24 appears to be L. South.

25 I'm going to read now from Defendant's Exhibit

1
2 B, which was a Xerox copy of the records of Central
3 Islip Hospital. The first page is an application for
4 admission of patient. It indicates here by request
5 that Thomas Dexter be admitted to Central Islip Psychia-
6 tric Center. "This is request is made due to the cir-
7 cumstances indicated in part B below on the attached
8 certificate. Under penalty of perjury I attest that
9 the information supplied on this application is true
10 to the best of my knowledge and belief. It is signed
11 Raul Paez, also the signature of the Director of
12 Community Services, 400 Sunrise Highway, Amityville,
13 New York. It is dated 10/28/76.

14 The next section is "applicant must complete
15 this statement; part B statement. Reasons for re-
16 questing hospitalization. Cite behavior, statements
17 and changes in behavior or character that tend to show
18 the existence of mental illness. If more space is
19 needed, attach additional sheet.

20 "32 year old married white male was examined by
21 me on 10/28/76 at 2 p.m. at Lakeside Hospital at the
22 request of Dr. Egner. This man became delusional and
23 hallucinatory last night. He was violent, assaultive
24 and screaming for no apparent reason. He assaulted a
25 nurse and a hospital guard. The police had to be called

twice last night.

"On examination, this well built, athletic looking male appeared delusional, feeling that people are trying to harm him. He talks about being in his car. Talks to imaginary people. He's frightened, very restless. Assaultive, protective restraints were necessary. History of drug abuse as well as alcohol. Insight and judgement, this man may become suicidal. He's in need of immediate psychiatric hospitalization. Patient to be taken to Central Islip Psychiatric Hospital via ambulance for immediate psychiatric hospitalization."

The next document I would like to read from is headed "Alcoholism Rehabilitation Unit, Central Islip." Name of patient, "Dexter, Thomas." Admission note. This is an admission note and apparently it is signed, C. H. Shieh, M.D. dated 10/28/76.

It reads, "This 32 year old male white, married, male is today admitted through the Alcoholism Unit, the Detoxification Service, D-4 on a DOCS application. He arrived with attendants from Pilgrim Psychiatric Center. He had been referred to us because of impending D.T.'s. He was never a patient at CIPC before. The length of this last drinking episode is two months.

1
2 He usually drinks beer and vodka and gin.

3 "On admission, he appears ambulatory, untidy,
4 unsteady, smells of alcohol and is cooperative, confused
5 and has the shakes. Admits to persecutory delusions,
6 hallucinations about ants, and he denies any convulsions.
7 He denied any recent or previous suicidal/homicidal
8 ideas or attempts. History of previous criminal
9 charges or any pending charges are also denied. Be-
10 cause of his excessive drinking, patient is unable to
11 care for himself and is delusional, hallucinatory and
12 confused.

13 "Medical history and preliminary physical examin-
14 ation: temperature, 98.6. Pulse 80. Respiratory, 20.
15 D/T: 130/80. Heart: Regular sinus rhythm, no murmurs.
16 Lungs; clear, incision scar at right lower chest.
17 Abdomin: soft. No other abnormalities. Patient has
18 not been treated for any physical ailment within the
19 last year. He admitted to using heroin, morphine and
20 cocaine. He denied being on any medication now. He
21 said he is allergic to talwin.

22 "Patient has been give a copy of status and
23 rights, and also a copy of rights regarding work.

24 "Diagnostic impression: one, mental diagnosis:
25 acute alcohol intoxicification, 291.40. Two, physical

1
2 diagnosis: Negative.

3 "Preliminary treatment goals, plan one, observe.
4 Two, bed rest. Three, medication, librium, 15 mgs.
5 stat. Librium I.N. at 11:30." It is signed C. H.
6 Sheih, M.D., Admitting Physician, October 29th, 1976.

7 "Patient is capable of handling his personal
8 and financial affairs." This is signed by apparently
9 the last name is G-u-i-y-a-b, M.D., Psychiatrist.

10 "Case history and mental status is the next
11 category. Below that is parenthesis, acute, severe,
12 it looks like S-4 close parenthesis. Attitude,
13 general behavior and appearance. Patient looks his
14 stated age and appears as ambulatory. Clean, alert
15 and in good condition. Anxious and speaks spontaneous-
16 ly. A stream of mental activity. Verbal productivity
17 is normal. Reaction and response, the patient is
18 coherent. He is composed and anxious.

19 "History, patient had an early drinking pattern
20 of being a social drinker until about 2 years ago when
21 he began to drink every day. He has little or no in-
22 sight into the reasons for his drinking problem. Pat-
23 ient drinks almost every day for the last two years.
24 He usually drinks beer, vodka. But one half bottle
25 daily. He denies any morning drinking. Patient has

1 symptoms of shakes. Hallucinations. Alcohol puts
2 him to sleep and makes him feel relaxed. Patient, no
3 insight into problem of drinking. He was never a
4 patient at CIPC before. He had only about one week
5 of sobriety. He does not attend AAA. Mental descrip-
6 tion reveals patient claims he was admitted to Lake-
7 side Hospital for kidney problems, but was found to be
8 hallucinating and confused. He admits to hallucinations
9 for the past two years. So, he was transferred to
10 CIPC under a doctor's order for detoxification. There
11 is no evidence of delusions. Recent or previous
12 suicidal attempts or ideas are also present. Orienta-
13 tion. Memory good. Good insight, impaired judgement.
14 Judgment impaired.

15
16 "History: patient was born in Brooklyn, New
17 York on 2/16/44. He was the second oldest of five
18 siblings. His father retired, has cancer of lungs and
19 enphasema. He describes his relation with other
20 siblings as good and in general he feels he had a good
21 happy childhood. He said he had no family w psych-
22 iatric problems. He adjusted to school, he completed
23 high school. He worked as a mechanic until 2 1/2 years
24 ago. No record of any military service. He has charges
25 of bank robbery, burglary, but no pending matters.

1
2 Married 11/19/70. Described his wife as a good wife
3 and mother. He says he was divorced from his first
4 wife because of his problems with drugs. He married
5 to a second wife for two years and denied any marital
6 problems. He says he has a good a warm relationship
7 with his children. He is now supported by welfare.
8 Patient has history of drug addiction for a few years
9 before he started drinking.

10 "He was on methadone maintenance program for
11 a while." It is signed by a Dr. G-u-i-y-a-b, M.D.,
12 Psychiatrist.

13 "Treatment plan, November 1st assessment of
14 problems. Heading is physical condition.

15 "Physical condition, cystitis. Admitted for
16 alcoholism. He has no evidence of psychosis. His
17 intelligence is average. No suicidal/homicidal ideas
18 or attempts. Admitted cooperative and motivation is
19 lacking.

20 Patient is married, second wife and lives with
21 three children. Treatment plan continuing.

22 "Environment, living, patient lives in well
23 integrated area. Educational, vocational, finished
24 high school and is on welfare. Socialization, recre-
25 ation. He claims he works on model cars. Watches TV

1
2 at home for relaxation.

3 "Following plan it will be reviewed weekly for
4 eight weeks. Diagnosis, acute alcoholic intoxication.

5 "Physicians note cystitis."

6 There are other entries that I won't read from
7 This is the discharge summary from Central Islip, from
8 the Psychiatric center on November 1st, 1976.

9 "Discharge Summary, Status Changed to Out-
10 Patient. Patient was admitted on October 28th, 1976
11 on a DOCS Application with admitting diagnosis of
12 alcohol intoxicification followed by a number 291-40.
13 He converted to voluntary status on November 1, 1976.

14 "Physical examination done by Dr. Palmer,
15 revealed cystitis. Patient was placed on high protein
16 diet. Patient has responded well to the treatment
17 plan. Medication and group discussion. Short term
18 goal of detoxification is now accomplished. Patient
19 has requested to leave the Unit. During the interview
20 he is in contact, coherent, he denies delusions,
21 hallucinations and/or suicide/homicide ideas. No
22 evidence of psychosis and does not consider himself
23 dangerous. Patient will not receive any medication
24 upon leaving. Long ~~term~~ goal, planning to attend AAA
25 group in Babylon and refused referral to any Suffolk

1
2 County out-patient clinic. He is supported by the
3 Department of Social Services. He was advised to
4 return to the Unit for detoxification in the future.
5 Patient is discharged to reside with family at 90
6 Paris Court, West Islip, New York.

7 "Acute alcoholism. Physical diagnosis, cystitis.
8 Mental condition, improved. Detoxification has been
9 accomplished.

10 "Prognosis, uncertain."

11 There is a signature, there's no signature on
12 this copy. There is a typed in name, "Anthony B.
13 Correosso, M.D."

14 There is another entry here I won't read from.

15 The next page I read from is, it reads in this
16 matter, the date is illegible on this and it reads I
17 have been advised that I have a possible kidney stone.
18 It looks like filling defect. The next word is urethral.
19 I've been advised--I have been advised to remain in
20 Central Islip Psychiatric Center for further care and
21 treatment. I wish to sign myself out against medical
22 advise and release the medical staff of Central Islip
23 Psychiatric Center and the Central Islip Psychiatric
24 Center from the responsibility for the consequences
25 this action on my part.

1
2 "I have been advised to obtain further care
3 and treatment from my own physician and urologist
4 immediately upon my discharge from Central Islip
5 Psychiatric Center."

6 Below that is, "Poor general medical condition.
7 Bile in urine; suggestive of liver disease."
8 This is signed by Thomas Dexter and is witness by
9 what appears to be a name, Warren D. Palmer, M.D.

10 The last record I'll read from is Defendant's
11 Exhibit C in Evidence. This is a record, a number
12 of records from the Good Samaritan Hospital. The
13 heading here is "Inpatient Admission Registration."
14 The name is "Dexter, Thomas." Date of admission is
15 11/16/76.

16 There is another form that I will read from.
17 You have the admitting date of 11/16/76.

18 The next record I will read from is headed,
19 "Emergency Room Record, Good Samaritan Hospital,
20 West Islip. Name of Patient, Dexter, Thomas. Address,
21 90 Paris Court, West Islip; date of admission, 11/16/76.

22 "Time, 2:28 p.m." There is a section in the
23 form, "Wife states patient was to be admitted to
24 Lakeside for cystiscope and bladder infection. Is
25 having pain." There is an indication that the staff

1
2 contacted Dr. Egner at 3 p.m. There's an entry in
3 ink on this particular record. The first part of it
4 is illegible. It looks like, "infection in urinary
5 tract, Lakeside Hospital, one and a half weeks ago.
6 It was going to have cystiscopy, however, he became
7 incoherent and biligerent and was transferred to
8 CIPC Hospital and released three days later. Brought
9 in by his wife."

10 There is an indication that Dr. Egner was
11 called.

12 "Diagnosis, acute GU tract infection. Two,
13 possible drug addiction." It is signed by a doctor.
14 it is illegible.

15 This next record is headed Good Samaritan
16 Hospital, Discharge Summary in the upper right hand
17 corner and you have a date 11/19. It reads, "This is
18 a 32 year old white male, who was brought to the
19 hospital because of cystitis and prostatitis for urolo-
20 gical evaluation. He also has an inordinate amount of
21 right flank pain and has previous IVP done which
22 have been normal. This patient is also a known drug
23 addict who has been under the methadone maintenance
24 program for a number of months. However, at the pre-
25 sent time he is not under any type of maintenance system.

1
2 He also has a history of extreme emotional
3 disturbances having recently been admitted to Central
4 Islip Hospital and discharged.

5 "He was admitted here for cystoscopic evaluation.
6 The procedure was done and we feel a chronic prostatitis
7 and cystitis.

8 "IVP was repeated here and was entirely within
9 normal limits. Patient is being discharged to out-
10 patient follow-up. Condition on discharge, good. Pro-
11 gnosis, good.

12 "Final diagnosis, one, acute cystitis and pro-
13 statitis. Two, narcotic addiction." There is an
14 illegible signature by a physician at the bottom.

15 This next record is headed, "Progress notes,
16 Good Samaritan Hospital, West Islip." It's dated 11/
17 16. It's written in ink, "32 year old with right
18 flank pain. Patient is known drug addict. Has had
19 violent episodes." The next two records are illegible.

20 The next page I read from is physician's orders
21 Good Samaritan Hospital, West Islip. "Thomas Dexter.
22 There is an entry, 11/16/76. Alert all ships, this
23 person has unstable personality and has history of
24 going biserk and punches people."

25 The next record is headed, Good Samaritan

1
2 Hospital, West Islip, New York. There are a number
3 of columns. The first column is headed, "Day Order."
4 The next column is headed, "MED-dosage route." There
5 is another heading above other columns that indicate
6 this has to do with medication. There's an indication
7 here for the use of demerol.

8 We have similar pages which continue and appar-
9 ently the preceeding page that I read from also has
10 to do with the use of drugs with respect to this
11 patient. It indicates the use of valium, and so forth.
12 The last page I'll read from is headed, "Nurses'
13 notes, Good Samaritan Hospital, West Islip, New York."
14 There is an entry for 11/19. The entry there under
15 nurses' notes, "7:25 prescription for pain. Appear-
16 ance fair. Smokes heavily. Appears calm. Polite in
17 manner. Quiet. Dr. Egner attended." That entry is
18 for 7:25.

19 "10:10 entry. Discharge, home. Apparently
20 wife instructed regarding home, prescribed antibiotics
21 and pain killers given to patient. Ambulatory." It
22 is signed apparently by a C-e-n-n-e-n.

23 Those are the portions that I wanted to read
24 from the hospital records.

25 THE COURT: Anything further Mr. Kelly?

1
2 MR. KELLY: Nothing further, Judge. The
3 Defendant rests.

4 THE COURT: Is there any rebuttal?

5 MR. RUSSO: Yes, Your Honor. Initially, Your
6 Honor, I would ask permission to read one brief por-
7 tion of the Defendant's Exhibit Number C, which I
8 don't believe was read to the Jury.

9 THE COURT: Go ahead.

10 MR. RUSSO: This is from the Discharge Summary
11 which gives--of November 19th, 1976. It is referring
12 to Thomas Dexter. He was admitted here for cystoscopic
13 evaluation. The procedure was done and revealed
14 chronic prostatitis and cystitis. IVP was repeated
15 and was entirely within normal limits. Patient is
16 being discharged to out-patient follow-up. Condition
17 on discharge good. Prognosis is good.

18 Your Honor, at this time as part of the Govern-
19 ment's rebuttal case, the Government would ask for
20 Mr. Kelly to stipulate to the January, 1970 convic-
21 tion of the Defendant Thomas Dexter for the crime
22 of bankrobbery.

23 MR. KELLY: Judge, I will stipulate with Mr.
24 Russo that the Defendant in 1970 was convicted of
25 a bank larceny, not a bank robbery. A conviction of a

1
2 very much.

3 (Jury excused.)

4 THE COURT: Anything Counsel needs from me?

5 MR. KELLY: No, Judge, I assume if I made the
6 motions at the end of the Government's case to dismiss
7 on the grounds the Government had not made out a prima
8 facia case, Your Honor would have denied that?

9 THE COURT: You reserved your right to do so.
10 Consider the motion made and consider it denied.

11 MR. KELLY: And at the end of the entire case
12 I move for a directed Judgement of acquittal on the
13 grounds the Government, as a matter of law, has failed
14 to prove the Defendant's guilt beyond a reasonable
15 doubt.

16 THE COURT: That motion is also denied.

17 MR. KELLY: Thank you, Judge.

18 THE COURT: 10 o'clock tomorrow morning we'll
19 begin summations.

20 ~~MR. RUSSO:~~ MR. RUSSO: Your Honor, at this time I believe
21 we didn't discuss the charge. The Government's charge.
22 But in light of the testimony that has come in and
23 the inference that I think are quite obvious from
24 the reading of the record, I would request and the
25 Government would move for an intoxication and insanity

1
2 charge so that the Jury will be wholly apprised of
3 what constitutes insanity and at what point such a
4 defense is in fact established.

5 There have been numerous references to schizo-
6 phrenic episodes and violent schizophrenic episodes.
7 I believe the Jury should be advised that insanity is
8 a defense when it deprives one, right or wrong, know-
9 ledgeable of right or wrong, or the irresistible urge
10 to commit a crime rather than a schizophrenic episode
11 that has been testified to. I think the same will be
12 appropriate of intoxication. There has been quite a
13 lot of testimony in the record of acute alcohol addic-
14 tion on the part of the Defendant. I think that the
15 Government--the Jury is entitled to know what type of
16 intoxication will constitute a defense to a criminal
17 liability.

18 THE COURT: Mr. Kelly?

19 MR. KELLY: All I can say to that, Judge, we
20 neither raised the defense of insanity with respect to
21 the November 19th incident in the indictment, nor have
22 I raised the defense of diminished capacity. We did
23 not have any testimony from experts or psychiatrists
24 and the like that would indicate the defense is
25 claiming that on November 19th, the Defendant was insane

1
2 or on that particular date he was too incapacitated
3 to appreciate the nature of his crime or to conform
4 his conduct to what the law requires. I have introduced
5 this information about the Defendant's background be-
6 cause it is fairly close in time to the incident
7 alleged in the indictment on November 19th. I think
8 that it bears only on whether or not at the time of
9 the crime on November 19th, he knew what he was doing
10 and he did what he was doing willfully, in violation
11 of the law. So I really don't think I've raised in-
12 sanity or raised diminished capacity formally.

13 I realize that the manner in which the case has
14 been presented that we did get close to those things.

15 THE COURT: The question now is what are we
16 going to do with the question of insanity?

17 MR. KELLY: Yes. The question is did he do it
18 through accident, mistake or other innocent reason.
19 Really that's what I'm relying on here, other than
20 innocent reason.

21 THE COURT: I'll consider that over night,
22 Gentlemen. I'll tell you before you start your
23 summations what my charge will be in that regard.

24 MR. RUSSO: Your Honor, I might just add, while
25 I certainly must agree, because of what has happened,

1
2 no psychiatrists have been called, I think that
3 may be a direct result of the Government's stipulation
4 to the fact that these records were in fact kept
5 in the ordinary course of business. They were indeed
6 psychiatric records. There has been quite a bit of
7 I think medical testimony as such that could cause--
8 are not aware that any of the Jurors have any special
9 knowledge and I believe to a layman, certainly a
10 layman such as myself, in the psychiatric field, that
11 we've gone over the line atleast implicitly in
12 suggesting that there was indeed some type of mental
13 aboration or something that would result in a lack
14 of criminal liability.

15 I believe that an instruction from the Court
16 would be most helpful in clarifying that for the Jury.

17 MR. KELLY: Granted, it comes very close. As
18 I say, I don't think it is because I haven't formally
19 put on any expert testimony with respect to the
20 Defendant's state of mind on November 19th. I think
21 I have not really crossed the line. But I realize
22 that it is a close question.

23 THE COURT: I assume you would object to my
24 charging the Jury that you are not claiming insanity
25 or diminished capacity or do I assume wrong?

1
2 MR. KELLY: Well, Your Honor, I have to be
3 consistent. That's not what I'm claiming. My posi-
4 tion is that I'm not raising the insanity or diminished
5 capacity formally, I'm raising diminished capacity
6 informally. I just want the Jury to take into their
7 consideration the Defendant's recent history prior to
8 November 19th, and I think if you want to charge the
9 Jury that I'm not claiming sanity or diminished capacity,
10 I would have to accept that as being consistent with
11 my position. I can't have it both ways, I don't
12 think.

13 THE COURT: Let me think about it over night.
14 It is not an easy line for me to draw in words. I'll
15 let you know the frame work of my charge before summa-
16 tions tomorrow.

17 MR. RUSSO: Thank you very much.

18 MR. KELLY: Thank you.

19 (Whereupon, the Court adjourned until May 10th,
20 1977.)
21
22
23
24
25

the Federal Deposit Insurance Corporation.

Each of those elements must be established beyond a reasonable doubt. Let us discuss each of them separately.

The first element required for proof of the information is the attempt to take money in the care of a bank. To "attempt" an offense means willfully to engage in conduct which constitutes a substantial step toward commission of the crime. Now, the law forbids that money be taken from the care of a bank, so if the Defendant willfully took a substantial step towards taking money from the bank, even if he did not succeed, the Government has proven this first element.

The second element is that the Defendant attempted to take the money by force, violence or intimidation.

Force or violence means physical force unlawfully exercised. Intimidation means putting in fear; but the fear must be from conduct of the accused which objectively would cause a reasonable expectation of bodily harm, rather than mere tempermental timidity.

The third element is that the Defendant's acts done in the attempt to take money from the bank, were

1
2 committed knowingly and willfully. This presents one
3 of the key contested issues for your determination.

4 You have heard the arguments of Counsel over
5 what evidence there is as to Defendant's intent on
6 November 19th, 1976. Defendant has not raised and
7 is not arguing a defense of insanity. Instead, he
8 argues that under all the circumstances the Government
9 has not proven beyond a reasonable doubt that the
10 Defendant acted knowingly and willfully.

11 To act knowingly is to act willfully, and an
12 act is willfully done if done voluntarily and intention-
13 ally, and with the specific intent of doing something
14 the law forbids, that is to say, with the bad purpose
15 either to disobey or disregard the law. The purpose
16 of the words voluntarily and intentionally is to in-
17 sure that noone will be convicted for an act done be-
18 cause of mistake or accident or other innocent reason.

19 The question of intent is for you, as Juror's,
20 to determine. Intent is a state of mind, and , of
21 course, it is not possible to look into a man's mind
22 to see what went on. The only way you have of arriv-
23 ing at the intent of the Defendant in this case is
24 for you to take into consideration all of the facts
25 and circumstances shown by the evidence and determine

1
2 from them whether the Defendant's conduct was willful.
3 Thus, since direct proof of willful intent is not
4 necessary, that intent may be inferred from acts and
5 from such inferences as may arise from a combination
6 of acts, even though one such act standing by itself
7 may seem unimportant.

8 You will recall evidence offered by the Govern-
9 ment that the Defendant was convicted of a bank
10 larceny in 1970. That he participated in a coin
11 store robbery in January of this year. You will also
12 recall when that evidence was received I instructed
13 you that the evidence should be weighted only on the
14 question of intent. I now want to give you some
15 additional instructions on the use of evidence of other
16 acts.

17 In determining whether the Defendant acted
18 willfully, you may consider the fact, if you find it
19 true, that the Defendant engaged in other transactions
20 similar to that charged in the information.

21 The fact, however, that the accused may have
22 committed another offense at some other time, is not
23 any evidence or proof whatever that at the time in
24 question here, the accused did the acts charged in the
25 information, even though both offenses are of a like

1
2 THE COURT: Thank you, Mr. Kelly. Is there
3 anything you wish to add Mr. Dexter?

4 THE DEFENDANT: No, Sir.

5 THE COURT: Any comment from the Government?

6 MR. GOULD: NOthing.

7 THE COURT: Gentlemen, I am a little bothered
8 with the Judicial problems presented here; particular-
9 ly as they may work out in the future as between the
10 State and the Federal authorities. So, that they'll
11 be no misunderstanding as to what I have in mind,
12 I think I will take an unprecedented step for me.
13 I'll put into the record here what I intend to put
14 on the form A-0 235 Report on the sentenced Defendant.

15 Let me get the sentence out of the way, then
16 I will explain it. It is adjudged that the Defendant
17 is hereby committed to the custody of the Attorney
18 General or his authorized representative for imprison-
19 ment for a term of eight years and the Defendant
20 shall be eligible for parole under 18 U.S. Code
21 Section 4205(d)(1) upon serving a term of one month.

22 Now, that's the sentence. I think the explan-
23 ation comes from what I've noted down for the 235
24 form which represents my own direct views of the
25 situation.

1
2 It reads as follows: Under sentencing objec-
3 tives, Mr. Dexter is a loser, has a long history of
4 conflict with the law. Many of his episodes are
5 markedly ineffectual, evidencing perhaps a desire to
6 get caught. He has had some psychiatric care, but
7 without good results. He has a long record of drug
8 and alcohol abuse and atleast one attempted suicide.
9 He needs a complete turn around. Until he gets it
10 he's potentially dangerous, not by intent, but as
11 a result of his taking up dangerous activities.

12 In the section of the form which asks for
13 my opinion what treatment or training the Bureau of
14 Prisons might provide, whether vocational, educational
15 medical, alcohol or narcotic, my comment is "Dexter
16 needs all five of the above."

17 Under recommended institutions, I've written
18 no recommendation. He needs one with psychiatric
19 facilities and care. I think in view of Mr. Dexter's
20 request, I'll change that and recommend Lexington.

21 Under the comments and recommendations relative
22 to parole, and this explains the rest of it, it is
23 a rather unusual parole recommendation; "Dexter's
24 crime here made no sense. He was ineffectual and
25 unarmed. Shortly before he had been confined for

1
2 psychiatric reasons. If he can be straightened out,
3 from his problems of drugs, alcohol, paranoia and
4 vocational limits, he should be released on parole
5 without much consideration being given to the actual
6 offense which was committed here."

7 In substance, Mr. Dexter, the sentence which
8 I have imposed of eight years is intended to provide
9 a significant period of time in which hopefully you
10 can get yourself straightened out. I've authorized
11 the Bureau of Prisons, the Parole Commission, to
12 exercise their discretion in your case as to when
13 they will parole you.

14 I do not think it is the function of what's
15 happened in the past, it's a function of what you
16 can accomplish in the future. Now, I do have some
17 misgivings as to whether any of that makes sense
18 in light of what the State authorities may do. The
19 end result that I think ought to be achieved or
20 hopefully can be achieved is clear to me; namely,
21 that Mr. Dexter will get some of the help that he
22 needs and be able to return to society as a contri-
23 buting member. I assume he'll be turned over to the
24 State authorities and there will be a sentencing
25 there. I suggest, Mr. Dexter, that as soon as that has

STATE OF NEW YORK
COUNTY OF SUFFOLK

USA v. THOMAS PAUL DEXTER - Docket No. 77-1433

MARILYN DAVIS being duly sworn, says:

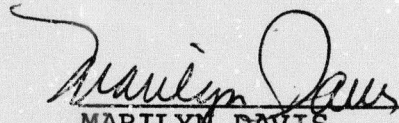
Deponent is not a party to this action, is over 18 years of age and resides at 68 New Mill Road, Smithtown, New York 11787.

On the date set forth below, deponent served the document noted on the attorneys indicated at the address set forth by depositing a copy of said document enclosed in a postage paid and properly addressed envelope, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Date of Mailing: March 8, 1978

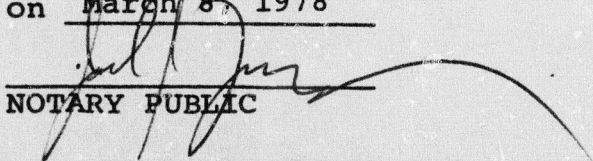
Document Mailed: Appendix

Addressee: U. S. Attorney, U.S. District Court Eastern District,
225 Cadman Plaza East, Brooklyn, NY 11201


MARILYN DAVIS

Sworn to before me

on March 8, 1978


NOTARY PUBLIC

JOEL J. ZIEGLER
Notary Public, State of New York
No. 41-8799890, Qual. Queens Co.
Commission Expires March 30, 1978

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